CHAPTER-X
CONCLUSIONS AND SUGGESTIONS

Women, even in the twenty-first century, are not accorded full justice, despite their struggle for equality with men. Now a day's women have broken their ill-social shackles and are ready to face the contemporary challenges without any help and hesitation. Yet, there has been so persistent and frequent commission of crimes in different shape and size violating their basic rights and outraging their dignity and modesty, almost all over the world. To undo the injustices done to them for ages starting with the Universal Declaration of Human Rights a series of international legal instruments have articulated a new charter of rights for women. The Constitution of India not only prohibited discrimination on the basis of sex but also provided affirmative actions and a large number of laws have actually been passed under this head. They often create an illusion that women enjoy a privileged position in our society but illusion is short-lived and vanished the moment one starts delving with facts. Despite such international obligations, Constitutional mandates, and protective laws the fact remains that women still suffer from a variety of disabilities related to their gender and they are forced to seek redress under law through Courts. Women generally approach the courts seeking relief in matrimonial disputes, in matter of maintenance and custody of children, in domestic violence and dowry harassment cases, in rape and sexual harassment as well as in most of other circumstances.
There is enough evidence to suggest that there are many barriers in accessing justice. Despite many laws favouring women, majority of women complained about the unsympathetic attitude of the judiciary towards women’s cause and highlighted that the police, public prosecutors, and the judges being part of patriarchal society, by and large biased against women and helped to perpetuate and preserve the oppression of women. Several studies relating to crime against women brought to light the ineffectiveness of the protective laws and judiciary to render justice to women in India. This has forced those concerned with the plight of the women, to re-examine the laws on crime against women and to find out the reasons for the failure of protective law and judiciary. The study attempted at examining the problem of eliminating patriarchal influence and maleness in law made certain observation in the following pages.

The ever-increasing violence and crime against women is often attributed to their low social status. It is the male domination throughout the civilization that reduced the position of women to that of slaves. However, at times, women are praised and worshiped also. It is said that during Rigveda period women enjoyed better status and acceded the same freedom that are available to men. Yet there was discrimination between sons and daughters. The social status of women declined during the post Vedic period and they were reduced to the position of chattels and Manu described wife as a property of the husband. Then the down of an era of male domination

The great epics Ramayana and Mahabharat placed women at the center of domestic and social life by glorifying influential women like Sita, Drowpadi etc.
However, even in this period there is evidence to show that certain forms of crimes such as Sati, Child Marriage, Dowry and Rape were committed against women. The Davadasi system has been misinterpreted during this period.

Koutiyla, while conceding certain rights to women, such as maintenance to widows and pregnant women, did not accord respectable position in social life. They were regarded as a source of recreation and luxury. However, women enjoyed better social status during Shatavahan period may be because of Budisim and Jainism accorded better status to women. Rajput women enjoyed complete liberty and they were capable of holding pen with as much felicity as the sword. However, evil practice of Sati was rampant among Rajputs.

During Muslim rule tradtional political structure came to a standstill and women were compelled to live in seclusim. Women were discriminated and denied education except during Akbars rule.

The British period saw the beginning of the emancipation of women. During this period several laws abolishing the practice of Sati, allowing widow remarriage, and regulating child marriage were passed. The influence of the English education and the values such as equality before the law created awareness amongst women. However, their status could not improve may be due to the influence of deep-rooted socio-cultural and religious institutions that are dominating their life.

The exploitation of women has many faces and continued commission of violent crimes against them manifests in the form of female infanticide, the abortion of the female child, the neglect and under nourishment of the girl child.
denial of education to girls, rape, pre puberty marriage, wife beating, harassment of a bride leading to suicide or murder. The Crime against women is as old as civilization itself. Our oldest texts such as Vedas, Upanishads, Smritis and Puranas provide a detailed account of crimes in the primitive society, such as Niyoga, Polygamy and Polyandry, Sati, Devadasi, Dowry, Female Infanticide, Child Marriage, Rape etc., these crimes were mostly committed on women due to the influence of religion, custom and traditions.

The form and method of crime has changed over a period of time and contemporary society has produced new crimes such as indecent representation, dowry murders and others. One noticeable feature of the history was that majority of women were subject to exploitation, while a few were glorified and were enjoyed better position in the society.

It is unfortunate to note that there is a general indifference towards such crimes and it appears that society was not able to eliminate them. Women are reared in an atmosphere which slowly but positively helps in the development of a feeling of inferiority, they become used to the institutional legitimization of their low status and find nothing wrong in some of the crimes that are committed against them. This process continues because of three factors namely, lack of awareness about the seriousness of the problem, general acceptance of superiority of men over women and the denial of violence by the women themselves, due to their cultural conditioning and social attitudes and compulsions. A part from the above, it is a complex mixture of social, economic,
political, cultural, biological and legal factors that account for the raising crimes against women.

The most important question relating to crime against women is what causes men to be violent, abusive and cruel towards women. Various theories of violence such as Psycho-Pathological, Socio-Psychological, Frustration – Aggression, Perversion, Self-Attitude, Motive Attribution and, Socio-Cultural theories have attempted to answer the above question with varying degree of success.

The psycho-pathological theory focuses on the personality characteristics of offenders and victims as chief determinants of criminal violence. This model includes analysis that links mental illness, alcohol and other intra-individual phenomena to acts of violence.

The socio-psychological model assumes that criminal violence can best be understood by careful examination of external environmental factors that exert influence on an individual offender. This model also examines the types of everyday interactions, which are precursors of violence. There are four theories in this category that approach criminal violence from a socio-psychological level of analysis.\(^1\)

Aggression theory explains the process by which aggression is directed to the source of frustration. According to Dollard, the individual feels frustrated if something interferes with his attempt to reach some goal and this frustration in turn leads to some of aggressions. The psychoanalyst’s theory explains violence

on the bases of infantile instincts, inborn pathological drives, distorted feelings, and childhood sadism or split ego. Self attitude theory maintains that in a society, a culture or a group that values violence, persons of low self-esteem may seek to bolster their image in the eyes of others and also in their own by carrying out violent acts. It explains the propensity to violence of those for whom society makes it difficult to achieve an adequate level of self-esteem. Motivation theory specifies the process used by actors to impute the motivations of others. It explains how the structure of relations is such that there is a high probability of malevolent intent being attributed to the actions of other individuals, thereby setting in motion an escalating cycle of resentment and aggression.

The sociological or socio-cultural model provides a macro level analysis of criminal violence. This model examines criminal violence in terms of socially structured inequality, social and cultural attitudes, norms regarding anti-social behaviour and inter-personal relation. Theories under this model focus on interpersonal or inter-actional processes as the source of violence. A number of theories – structural theory, system tension theory, anomie theory, resource theory, patriarchy theory etc have come up which explain male violence. What emerges from these theories are (i) whether violence is a normal response of provocation, (ii) whether it involved the acting out of some psychopathology, (iii) whether it acts as an instrument useful in obtaining some end or reward and (iv) whether it is a response consistent with norms supporting its use and so forth.

Off late there is an increased awareness about the crime against women and socio political organizations began to high light the problem. Heightened
women's movement throughout the world including India, International human rights movement, constitutional prescriptions and political compulsions paved the way for introduction of progressive policies and laws are directed against minimizing violence against women.

The most heinous crime is dowry murder and bride burning by the in laws to satisfy their greed. Earlier culprits in such crimes could not be successfully prosecuted because; they have to be prosecuted under the provisions of IPC, Cr.P.C and Evidence Act. Accused often escaped from punishment on technical grounds, such as lack of evidence or the prosecution failed to prove the guilt beyond all reasonable doubt. Large number of acquittals led to introduction of amendments to Indian Penal Code, Criminal Procedure Code and Indian Evidence Act.

To curb and eradicate the deep-rooted social evil of dowry, the Parliament of India passed the Dowry Prohibition Act. 1961. As the Act has not proved effective, it was amended in 1984 and 1986, to punish mere giving and taking dowry and to prescribe severe punishments.

Apart from prescribing severe punishments certain presumptions such as death of the bride within seven years of marriage shall be deemed to be dowry death under section 498A of IPC and presumptions relating to cruelty and harassment under section 113A and 113B of the Evidence Act were enacted. It has been found that inspite stringent laws, majority of the culprits go unpunished because of limitations in the administrative of justice, such as administrative lethargy and judicial indifference towards crime against women.
The increased instances of rape establish the presence of unabated violence against women and also the male chauvinism in Indian society. Many women victims of violent rape suffer silently and the large number of culprits not only go unpunished but also acquires respectable position in the society. It is believed, firstly that lack of clear definition of the offence of rape led to large number of acquittals and denial of justice.

Secondly, existence of certain notions such as absence of injury, non-resistance, non-corroboration of evidence and significance of age appears to be the cause of low rate of conviction, which indirectly encourages the commission of offence.

Thirdly, the requirement that women gave her consent often proves to be fatal to the successful prosecution of culprits.

Fourthly, judiciary while acquitting the accused often focused on the past conduct of the victim that she is a woman of easy virtues.

Lastly, it is the attitude of prosecution and judges that matters most in punishing culprits in rape case.

The other milder from of violence to which women are subject are sexual harassment involving unwelcome sexual advances, requests for sexual favour or other verbal or physical conduct outraging her modesty. There are offences under sections 294, 354, and 509 of the Indian Penal Code dealing with eve teasing and its aggravated form sexual harassment. These offences can deal with some forms of sexual harassment and not all, therefore, the Supreme Court has given elaborate guidelines to deal with sexual harassment in workplace.
The exiting law appears to be ineffective in dealing with domestic violence not related to sexual harassment. On the basis of direction given by the apex court the Union Parliament in the year 2005 enacted the Domestic Violence Act providing civil remedies to women and children subject to domestic violence. Many of women’s organizations have appreciated the law on domestic violence and claim that this will empower victims and protect them against abuse. However, it is also claimed that this law makes it very easy to escalate domestic problems in the daily life to such a level that eventually leads to a break down of marriage and family life. It is feared that this law lead to more divorces, broken homes and children will pay the ultimate price by long deprived of a pleasant childhood. Therefore, it is often argued that there is need for gender-neutral law to protect the genuine victims of domestic violence.

The other forms of indignations to which women are subject are indecent representation and pornography. It is claimed that obscenity as a criminal offence is out dated and pornography is a big business. But there is a tendency in publications particularly in advertisements which have the elements depraving or corrupting young persons and making woman the object of lust.

It is often claimed that law and policy relating to crime against women have not succeeded in achieving there objectives, may be because of the fact that normative and institutional structure has not taken women’s questions seriously. The recent study by feminist jurists and their emphasis on gender justice has tremendous impact on normative and institutional structure relating to crime against women.
Feminism and feminist jurisprudence stems from a firm belief that society and necessarily legal order is patriarchal. It seeks to analyse the contribution of law in constructing, maintaining, reinforcing and perpetuating patriarchy and looks at ways in which this patriarchy can be undermined and ultimately eliminated. Feminism stimulates the study of social, economic and political institutions and their norms from the standpoint of women and their life experience. Feminist movement contributed to the institutional changes and helped policy makers to effectively promote gender justice.

Legal reforms have been at the center of the agenda prioritizing gender justice in India. Women's movement, at times, claim that through legal reforms gender justice can be realized to a great extent. However, many are skeptical about the role of law in ensuring gender justice as the law itself has been used to reinforce social subjugation of women. The striking contributions of feminist engagement with the law lies in its focus on judicial process where it is asserted that judicial attitudes plays an important role in promoting gender justice.

Many victims of violence often claim that the criminal justice system is patriarchal and not sympathetic to them. Prevalence of gender bias and insensitivity to women's cause coupled with inefficiency and corruption in law enforcement made the system vulnerable to the forces of patriarchy.

Gender bias appears to exist in trial of cases relating to crime against women. In dowry trials it manifests itself in many forms.
Firstly, judges often refuse to treat traditional presents as dowry and there by large number of culprits could not be convicted.

Secondly sentencing decisions establish that judges often show undue sympathy and leniency to culprits in the form of reduced punishments.

Thirdly, male bias arises when judges refuse to appreciate evidence in support of punishment either by ignoring relevant evidence such as dying declaration or by rejecting them on technical grounds.

It is often asserted that some judges being product of the patriarchal society seems by and large biased against women in rape trials. This bias manifested at every stage of trial including appreciation of evidence, interpretation of laws and sentencing the accused. Apart from the above bias may arise an account of the influence of socio political factors including caste and religion. The courts interpreted the provisions of law relating to absence of injuries, submission to intercourse, easy virtue of women, significance of the age of the victim in favour of those accused of rape. The courts used to acquit many culprits on inferred consent and it is normally inferred from non-resistance and absence of injury. Fortunately, in recent years courts have accepted the principle that induced consent is no consent. Accordingly, a consent given on the bases of false promise of marriage is not a free consent.

A very common allegation flung around in most rape cases was the easy virtue of the women in question. It suits the common sex offender to transfer the blame for his crime squarely on the shoulders of the victim, as an excuse for
which there is no legal sanction but the reactionary society and the traditional judiciary assist the accused.

The judiciary is often showed undue sympathy and a leniency towards young offenders leading to denial of justice to the victims. Though rape warrants severe sentence there are instances wherein appellate courts reducing sentence awarded by trial courts.

It appears that the judicial system is insensitive to the precarious status of women and even the Supreme Court cases showing insensitivity of the judges to rape and dowry victims were distressing. Insensitivity can easily noticed through undue delay in prosecution and trial of accused, unnecessary harassment and humiliation of victims during cross-examination and is giving importance to procedural technicalities. Accordingly, the Supreme Court itself made the observation that Criminal trial cannot be equated with a mock scene from a stunt film. The legal trial is conducted to ascertain the guilt or innocence of the accused arraigned. The hyper technicalities and figment of imagination should not be allowed to divest the court of its responsibility of arriving at truth.

The judicial attitude towards crime against women appears to be changing in the recent years may be because of socio - political transformation of the society. The active women's movement with growing concern for the plight of women shown by the members of the higher judiciary paved the way for introduction of reforms in the law relating to crime against women. Now judicial intervention on various issues concerning women has been largely progressive and liberal. Judicial activism through the process of affirmative action and
protective discrimination in favour of women has been to a large extent, instrumental in the growing empowerment of women and providing the necessary frame work within which women of today is able to move around with confidence, assert her rights and gradually progress towards a position where from they can stand on equal footing with men in all walks of life. The post emergency activism of Supreme Court was slowly extended to women’s issues. Accordingly, many directions were issued by the Supreme Court to the union and State Governments to empower women and to respect their rights.\(^2\)

Firstly, the Court recognizing the inherent limitations of social legislations and to punish dowry culprits directed the state Government to set up special dowry cells in police department.

Secondly, in rape trials, the Supreme Court issued several directions relating to investigation, conducting trail and punishment so as to render justice to the victims. The most important direction was concerning State compensation to the victims of rape.

Thirdly, one of the most important out come of judicial activism was the several directions given to the government to prevent sexual harassment in work place. These directions are a positive step in minimizing sexual violence and in upholding dignity of women.

Fourthly, the court has issued several directions in case involving kidnapping and abduction of minor girls.

\(^2\) *Infra*, p. 359.
Lastly, a survey of Supreme Court decisions shows that the Indian courts are alive to the problem of crime against women in the areas where municipal law is lacking. The Courts by applying international human rights standards made attempts to solve women's problems.

There are inherent limitations to the judicial role and excessive judicial activism may lead to judicial populism thus it may affect harmony between other two organs of the Government. Even in respect of women's issues Court has to balance other interests also.

Suggestions

Crime is a social fact and every society has to devise measures and methods of combating it. Crime against women cannot be easily curtailed may be because of either direct or tacit legitimization of crime. However, civilized society must make attempt to keep them at bay so that gender justice is effectively realized.

The continued commission of Crime Against women can be attributed to the deficiencies or lacuna in the normative and institutional structure of law. Therefore, it is appropriate to make certain suggestions that emerge out of the present study.

1. The mere presence of progressive laws enacted by the state may not be sufficient to eradicate the dowry menace. Presence of lacuna in them prevent the society from effectively punishing the dowry offenders and therefore, it is suggested that the demand for traditional presents must be considered as demanding dowry and such acts must also be made
punishable. There must be mandatory provision for listing of gifts. Mere demand of dowry must be treated as dowry harassment even if it does not involve intimidation. During dowry murder trial the courts need not insist upon corroboration of dying declarations.

2. Rape being the most heinous crime undermining the dignity of women and its eradication must be at the highest priority of any civilized government. To make the law more effective, it is believed that the following changes in rape law are necessary. Firstly, it is desirable to amend section 375 relating to definition of the offence of rape to include sexual intercourse on false promise of marriage and consent obtained by fraud or by inducement as no consent.

   Secondly, victims of rape need not be treated as accomplice in the crime and her testimony has to be acted upon. To ensure fair trial in camera proceedings and police interrogation in the presence of her attorney shall be made mandatory.

   Thirdly, the judges must be careful in applying notions such as easy virtue of women, tacit consent and submission to intercourse during rape trial. The court shall maintain anonymity of victim during trial and pre conviction publication should be avoided.

   Fourthly, provision for legal assistances to the victims may be made mandatory.

   Fifthly, for ascertaining the truth medical examination shall be conducted immediately within twelve hours of commission of offence.
Sixthly, the trial of rapes cases must be time bound and activists of women’s organizations and N.G.O. may be allowed to assist the victims of rape.

Lastly, judiciary has made provision for award of compensation to victims but such payment must be made compulsory though statutes and scale of compensation must be determined.

3. The ambit offence of sexual harassment in workplace shall be expanded to include those employed in unorganized sector such as agricultural construction and similar others.

4. According, to the present law of domestic violence only male member of a family is held responsible but not female abettors. Therefore, complaint of domestic violence can also be made against female members who are also responsible for the wrong. Hence, there is the need to amend the definition of domestic violence suitably so that the law will be gender neutral.

5. The law of obscenity, in the name advanced in civilization should not used to exploit women for commercial or entertainment purposes. Therefore, suitable amendments have to introduce to provide criterion for determining the offence.

6. The judicial attitude towards crime against women has to undergo drastic transformation to reduce male bias and to make judges sensitive towards women’s cause. A former Chief Justice of India, while emphasising the need for educating judge said that the object is to change one’s awareness, knowledge, skill and behavior in relation to gender issues. Gender sensitive
judges can take a more proactive role in the proceedings rather simply to the material presented before him. They can recognize the need to obtain the best quality evidence from witness particularly in relation to crime against women.

There are umpteen numbers of cases to show how individual judges have been trying to eliminate gender bias in courts with varying degree of success. To encourage, such judges and to sensitize other judges regular training courses are required. Accordingly, it is suggested that every judge shall receive one month training at least once in 3 years regularly, and such courses should evolve strategies to introduce attitudinal changes in presiding officers so as to eliminate gender bias in judicial process.

7. Gender bias may creep into the judicial process through prosecution and investigation officers. The judges through their effort minimize such biases. Further prosecution and police officers must also be educated though training programmes.

8. Mere attitudinal changes in judiciary, prosecution and administration is not enough and there is the need create social awareness about increasing crime against women. Therefore, the state and society must evolve strategies and device programmes to sensitise general public about the need to curb violence against them.

State intervention through progressive laws and their implementation by gender sensitive judges and official and effective participation of civil society will establish a society where equal justice for both men and women will be a reality.